

ATTACHMENT 4

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,

Plaintiff,

v.

INTUITIVE SURGICAL, INC.,

Defendant.

Case No.: 3:21-cv-03496-VC

Expert Report of Richard F. Bero, CPA, CVA
December 2, 2022

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

TABLE OF CONTENTS

I.	Introduction.....	1
A.	Assignment	1
B.	Alleged Wrongdoings	1
C.	Basis for opinions	2
D.	Expert experience and compensation.....	3
E.	Trial.....	4
F.	Basic damages assumptions.....	4
G.	Opinions Summary	6
II.	Parties in suit.....	7
A.	Plaintiff – SIS.....	7
B.	Defendant – Intuitive	8
III.	Additional Parties not in suit – Rebotix and Restore.....	10
A.	Rebotix	10
B.	Restore	12
IV.	Intuitive’s da Vinci surgical system.....	13
A.	Launched in 1999.....	13
B.	da Vinci Products – 5 categories.....	14
C.	da Vinci Surgical System Models.....	14
D.	Placed primarily in acute care hospitals.....	15
E.	da Vinci Surgical System Components.....	16
1.	Surgeon’s Console	16
2.	Patient-Side Cart	16
3.	3DHD Vision System	17
4.	Firefly Fluorescence Imaging (“Firefly”)	17
5.	Da Vinci Xi Integrated Table Motion.....	17

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

F.	U.S. systems sales – 600 and 865 systems placed in 2020 and 2021	18
G.	Installed U.S. daVinci systems – 3,720 units and 4,139 units as of December 31, 2020 and December 31, 2021	18
H.	Number of daVinci procedures	18
I.	da Vinci Surgical Systems Sales and Profits	19
V.	Intuitive’s EndoWrist Instruments and Accessories	19
A.	10 to 18 uses per EndoWrist	20
B.	S/Si and X/Xi EndoWrists are essentially the same (except for encryption)	21
C.	U.S. S/Si and X/Xi EndoWrist annual unit sales – 2014 through annualized 2022	21
D.	EndoWrist sales and profits	21
E.	Expired and potentially repairable EndoWrists approximate 60% of current year units sold	22
VI.	SIS’s EndoWrist repair service	23
A.	Monumental Interest in SIS’s repair program	24
B.	SIS’s sales prices ranging from \$1,100 to \$1,700 per repair, representing an average discount of 42%	25
C.	SIS’s estimated repair services applied to all U.S. da Vinci systems’ installed base equates to more than \$800 million potential EndoWrist repair service revenue per year	25
D.	Subcontracted 2019 repair work to Rebotix	26
E.	Initial EndoWrist Repair Sales and Customers	27
F.	Intended to repair EndoWrists in-house	27
G.	EndoWrist Recovery (as opposed to repair) Program	27
VII.	Intuitive considered its own instrument refurbishment service but decided against it	28
VIII.	Rebotix’s repair program – working with SIS	29
A.	Would have first begun repairing X/Xi by as early as 2019	30
IX.	Restore’s repair program – working with SIS	31

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

A.	Expected greater than 70% to 80% of market would use repair services	31
B.	Expected 72% of EndoWrists received would be repairable	31
C.	Would have first begun repairing X/Xi no later than January 2022 and potentially as early as January 2021	31
X.	GPO’s	33
A.	Vizient – more than 60% of U.S. acute care providers in 2022	33
1.	September 2016 Vizient – SIS Agreement	33
2.	September 2019 Vizient – SIS Agreement Amendment specific to EndoWrist repairs	34
3.	August 2020 Vizient – SIS Agreement - specific to EndoWrist recovery (not repairs)	35
4.	Subsequent Vizient – SIS Agreement Amendments – specific to EndoWrist recovery (not repairs)	36
B.	Premier – 2 nd largest GPO in the U.S.	36
C.	HealthTrust	37
XI.	Robotic Surgery Industry	37
XII.	Surgical Instruments Industry	38
XIII.	Anticompetitive Conduct Damages	40
XIV.	SIS’s Lost Profits Damages	41
A.	The ‘but for’ analysis - difference between ‘would-have-been’ and ‘actual’	41
B.	The Alleged Wrongdoings caused SIS’s lost revenue and profits	42
C.	Demand – monumental interest	42
D.	Capacity and capability to perform EndoWrist repairs	45
E.	Scenario 1 – Illegal Encryption lost profits damages	46
1.	Lost EndoWrist repair units	46
a)	‘Would-Have-Been’ EndoWrist repair units – through 2025	47

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

(i)	EndoWrist instruments potentially repairable by SIS – unit sales.....	47
(ii)	Expiration rate of new sales units – 60%	48
(iii)	Market share rate based on Vizient – 55%	49
(iv)	Conversion rate – 15%, 50%, 70%	50
(v)	Collection rate – 70%.....	51
(vi)	Repair yield rate – 72%.....	51
(vii)	‘Would-Have-Been’ EndoWrist repair units through 2025.....	52
(viii)	‘Would-Have-Been’ EndoWrist repair units – 2% to 12% of units sold	52
b)	Actual EndoWrist repair units	53
c)	Lost EndoWrist repair units	53
2.	Lost revenue.....	53
3.	Less: Incremental costs	54
a)	In-house repair model costs	54
(i)	Repair costs.....	54
(ii)	Chip costs.....	55
(iii)	Vizient GPO administrative fee	55
(iv)	SGA costs.....	56
b)	Distributor model costs	56
4.	SIS’s In-house model lost profits through 2025 – approximately \$102.6 million	57
5.	SIS’s Distributor model lost profits through 2025 – approximately \$40.9 million	57
6.	Annual lost profits per unit	57
F.	Scenario 2 – Unenforceable Contracts lost profits damages	57

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

XV. Lanham Act Damages 58

XVI. Conclusion 59

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

E. Initial EndoWrist Repair Sales and Customers

While SIS’s repair business caught Intuitive’s attention, SIS’s initial EndoWrist repairs were minimal before they were stopped. SIS serviced 49 EndoWrists and had at least \$38,900 in total revenue with a price range of \$1,100 to \$1,700 per EndoWrist repair.¹⁹⁶

Prior to Intuitive’s actions of sending cease and desist letters to SIS’s customers and potential customers, SIS’s EndoWrist repair customers included Legacy Health System, Marin Health Medical Center, Kaiser Permanente Fontana Medical Center and Advocate Aurora Health System and its potential customers included Banner Health System, Piedmont Healthcare and Vizient, among others.¹⁹⁷

F. Intended to repair EndoWrists in-house

SIS intended to bring all EndoWrist repairs in-house to its Glendale Heights facility.¹⁹⁸ SIS began setting up its own repair capabilities at its facilities in Glendale Heights, Illinois, based on the existing Rebotix process.¹⁹⁹

In February 2020, SIS hosted an EndoWrist repairs meeting at its Glendale Heights facility.²⁰⁰ Multiple representatives of a large hospital system with tens of millions of dollars in annual EndoWrist costs attended.²⁰¹ The attendees discussed SIS performing repairs of EndoWrists, i.e., with third parties such as Rebotix providing the updated chip and SIS performing the underlying repairs at its facilities.²⁰²

G. EndoWrist Recovery (as opposed to repair) Program

SIS also offers a Robotic EndoWrist Inspection and Recovery Program wherein SIS recovers and inspects instruments to determine if the instrument(s) have any remaining uses.²⁰³

¹⁹⁶ **Schedule 14.0.**

¹⁹⁷ Plaintiff’s Response to Intuitive’s Interrogatory No. 4 (August 8, 2022). SIS000167 (Posdal Dep. Ex. 142). Discussion with Keith Johnson.

¹⁹⁸ 30(b)(1) Deposition of Greg Posdal 25-31 (November 1, 2022).

¹⁹⁹ Plaintiff’s Response to Intuitive’s Interrogatory No. 5 (August 8, 2022). Discussion with Greg Posdal.

²⁰⁰ Plaintiff’s Response to Intuitive’s Interrogatory No. 5 (August 8, 2022).

²⁰¹ Plaintiff’s Response to Intuitive’s Interrogatory No. 5 (August 8, 2022).

²⁰² Plaintiff’s Response to Intuitive’s Interrogatory No. 5 (August 8, 2022).

²⁰³ SIS003902-003903.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

Agreement”).²⁵⁸ According to this Agreement, Vizient provided purchasing opportunities to individual entities or groups of entities under various contracts, each of which Vizient referred to as a “Member” or, collectively, as “Members.”²⁵⁹ I understand these “Members” represent the hospitals Vizient represents, as noted above. Under this Agreement, SIS agreed to offer certain services defined in Exhibits A, A.1 and B for sale and license to end-use customers, such as these “Members.”²⁶⁰

This Agreement had an initial 3-year term effective September 1, 2016 and would renew automatically for two additional one-year terms unless Vizient gave adequate notice.²⁶¹ SIS agreed to pay Vizient a GPO administrative fee of 4% of all net sales (as defined in the Agreement) for the services it sold to Members.²⁶²

2. September 2019 Vizient – SIS Agreement Amendment specific to EndoWrist repairs

In 2019, Vizient Supply, LLC and SIS entered into an Amendment to their September 1, 2016 Agreement (“September 2019 Vizient Amended Agreement”) that was effective September 15, 2019.²⁶³ This Amended Agreement addressed SIS’s intention to repair EndoWrist products, and included an Exhibit A, a da Vinci EndoWrist Pricing Schedule, for 38 EndoWrist products.²⁶⁴ The timing of this Amended Agreement also coincided with Vizient’s interest in SIS’s EndoWrist repair business and the meetings it helped set up with its members.²⁶⁵

The EndoWrist pricing ranged from \$1,100 to \$1,700.²⁶⁶ I understand SIS would have paid Vizient a GPO administrative fee of 4% of net sales on EndoWrist sales made under this Amendment, consistent with the September 2016 Agreement described above.²⁶⁷

²⁵⁸ SIS330591-330634.

²⁵⁹ SIS330591-330634 at 592.

²⁶⁰ SIS330591-330634 at 592. The prices for the various services SIS agreed to offer were all on Exhibit A (SIS330591-330634 at 608-623).

²⁶¹ SIS330591-330634 at 594.

²⁶² SIS330591-330634 at 597.

²⁶³ SIS0000047-0000049.

²⁶⁴ SIS0000047-0000049. Discussion with Keith Johnson.

²⁶⁵ Discussion with Keith Johnson.

²⁶⁶ SIS0000047-0000049.

²⁶⁷ Discussion with Keith Johnson.

HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY

Given these considerations, I apply a 15% conversion factor in 2020, or Year 1 (i.e., the mid-point between 0% as of January 1 and 30% as of December 31). I apply a 50% conversion factor in 2021, or Year 2 (i.e., the mid-point between 30% as of January 1 and 70% as of December 31). I apply a 70% conversion factor in 2022, or Year 3, and thereafter.

(v) Collection rate – 70%

The next factor I account for is EndoWrist instrument collection. I apply a 70% collection rate.

Despite best intentions, I understand not all expired EndoWrists would necessarily be collected by the acute health care providers. According to Jean Sargent, for an expensive instrument such as the EndoWrist, a 75% collection rate would be reasonable.³⁸⁰

Intuitive similarly targeted a greater than 70% collection rate for its contemplated EndoWrist refurbishment program in a September 2020 “Gen4 Instrument Refurbishment Pilot” document.³⁸¹

(vi) Repair yield rate – 72%

The next factor I account for is the repair yield. I apply a 72% repair yield rate.

Not all of the collected units would have been repairable. Generally speaking, SIS’s reparability yield on its various instruments exceeds 95%.³⁸²

Intuitive performed an EndoWrist refurbishment pilot on its top six instruments in 2020 and averaged 85% refurbishment yield.³⁸³ It also projected higher future refurbishment rates at 95% refurbishment for two (of the six) instruments, 90% for three, and 85% for one.³⁸⁴

SIS’s initial (limited) data suggested an 88% repair yield rate.³⁸⁵

³⁸⁰ Discussion with Jean Sargent.

³⁸¹ 30(b)(6) Deposition of Colin Morales (November 1, 2022) at Ex. 143 (Intuitive 00626597-626616 at 604).

³⁸² Discussion with Keith Johnson. *See also, e.g.*, SIS003653-0033670 at 661.

³⁸³ Morales 30(b)(6) Dep. at Ex. 143 (Intuitive 00626597-626616 at 609).

³⁸⁴ Morales 30(b)(6) Dep. at Ex. 143 (Intuitive 00626597-626616 at 612).

³⁸⁵ **Schedule 14.0.**

Schedules Index

Schedule #	Title
Schedule 1.0	Damages Summary
Schedule 2.0	Scenario 1 - Discounted Lost Profits: In-house Model
Schedule 2.1	Scenario 1 - Undiscounted Lost Profits: In-house Model
Schedule 2.2	Scenario 1 - Lost EndoWrist Repair Units
Schedule 3.0	Scenario 1 - Discounted Lost Profits: Distributor Model
Schedule 3.1	Scenario 1 - Undiscounted Lost Profits: Distributor Model
Schedule 4.0	Scenario 2 - Discounted Lost Profits: In-house Model (2 Year X/Xi Delay)
Schedule 4.1	Scenario 2 - Undiscounted Lost Profits: In-house Model (2 Year X/Xi Delay)
Schedule 4.2	Scenario 2 - Lost EndoWrist Repair Units (2 Year X/Xi Delay)
Schedule 4.3	Scenario 2 - Discounted Lost Profits: In-house Model (1 Year X/Xi Delay)
Schedule 4.4	Scenario 2 - Undiscounted Lost Profits: In-house Model (1 Year X/Xi Delay)
Schedule 4.5	Scenario 2 - Lost EndoWrist Repair Units (1 Year X/Xi Delay)
Schedule 5.0	Scenario 2 - Discounted Lost Profits: Distributor Model (2 Year X/Xi Delay)
Schedule 5.1	Scenario 2 - Undiscounted Lost Profits: Distributor Model (2 Year X/Xi Delay)
Schedule 5.2	Scenario 2 - Discounted Lost Profits: Distributor Model (1 Year X/Xi Delay)
Schedule 5.3	Scenario 2 - Undiscounted Lost Profits: Distributor Model (1 Year X/Xi Delay)
Schedule 6.0	Intuitive's U.S. EndoWrist Instrument Units - Actual and Forecasted: 2014 - 2025
Schedule 7.0	Estimated EndoWrist Expiration Rates: 2018 - 2021
Schedule 8.0	Potential EndoWrist Instrument Units, Net Sales Dollars and Average Selling Price by System (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022
Schedule 8.1	Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022
Schedule 8.2	Potential EndoWrist Instrument Units, Net Sales Dollars and ASP by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and September 2019 Vizient Amended Agreement Prices): 2018 - June 2022
Schedule 9.0	SIS's Estimated EndoWrist Instrument Repair Cost:2020 - June 2022
Schedule 9.1	Intuitive's "Top 5" X/Xi EndoWrist Instrument Units:2018 - June 2022

Schedules Index

Schedule #	Title
Schedule 10.0	SIS's Estimated Interceptor Chip Cost (Based on Rebotix's Sales to Restore)
Schedule 10.1	Rebotix Sales to SIS: June 27, 2019 - November 21, 2019
Schedule 11.0	Potential EndoWrist Instrument Units, Costs and Costs per Unit by System (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022
Schedule 11.1	Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci S/Si (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022
Schedule 11.2	Potential EndoWrist Instrument Units, Costs and Costs per Unit by Product (Instrument Number) - da Vinci X/Xi (Using Intuitive Sales Volumes and Rebotix Pricing): 2018 - June 2022
Schedule 12.0	SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci S/Si
Schedule 12.1	SIS's EndoWrist Instrument Sales Prices and Costs (from Rebotix) - da Vinci X/Xi
Schedule 12.2	SIS's EndoWrist Instrument Sale Price vs Intuitive Sales Price - da Vinci S/Si
Schedule 13.0	Intuitive's EndoWrist Instrument Units, Net Sales Dollars and Average Selling Price by System: 2014 - June 2022
Schedule 13.1	Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci S/Si: 2014 - June 2022
Schedule 13.2	Intuitive's EndoWrist Instrument Units and Net Sales Dollars by Product (Instrument Number) - da Vinci X/Xi: 2014 - June 2022
Schedule 14.0	SIS's EndoWrist Instrument Repair Summary
Schedule 15.0	SIS's Financial Statements: 2019 - October 2021
Schedule 15.1	SIS's Detailed SGA: 2019 - October 2021
Schedule 16.0	Intuitive EndoWrist Instrument Average Selling Price, Units and Net Sales Dollars: 2020 - 2025
Schedule 16.1	Lanham Act Based on Scenario 2 - Unenforceable Contracts(2 Year X/Xi Delay): 2020 - 2025
Schedule 16.2	Lanham Act Based on Scenario 2 - Unenforceable Contracts(1 Year X/Xi Delay): 2020 - 2025

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Scenario 1 - Lost EndoWrist Repair Units

Schedule 2.2

	2020	2021	2022	2023	2024	2025	Total
<u>EndoWrist instruments potentially repairable by SIS - units</u>							
[A] da Vinci S/Si	52,970	22,411	8,214	3,839	1,928	1,077	90,439
[A] da Vinci X/Xi	299,954	346,579	365,304	422,719	455,982	437,186	2,327,724
[A] Total	352,924	368,990	373,518	426,558	457,910	438,263	2,418,163
[B] Expiration rate of new sales units	60%	60%	60%	60%	60%	60%	60%
<u>Expired EndoWrist instrument - units</u>							
[C] da Vinci S/Si	31,782	13,447	4,928	2,303	1,157	646	54,263
[C] da Vinci X/Xi	179,972	207,947	219,182	253,631	273,589	262,312	1,396,633
[C] Total	211,754	221,394	224,110	255,934	274,746	262,958	1,450,896
[D] SIS market share rate	55%	55%	55%	55%	55%	55%	55%
<u>SIS market share units</u>							
[E] da Vinci S/Si	17,480	7,396	2,710	1,267	636	355	29,844
[E] da Vinci X/Xi	98,985	114,371	120,550	139,497	150,474	144,272	768,149
[E] Total	116,465	121,767	123,260	140,764	151,110	144,627	797,993
<u>SIS conversion factor</u>							
[F] da Vinci S/Si	15%	50%	70%	70%	70%	70%	
[F] da Vinci X/Xi	15%	50%	70%	70%	70%	70%	
<u>SIS converted units</u>							
[G] da Vinci S/Si	2,622	3,698	1,897	887	445	249	9,798
[G] da Vinci X/Xi	14,848	57,186	84,385	97,648	105,332	100,990	460,389
[G] Total	17,470	60,884	86,282	98,535	105,777	101,239	470,187
[H] Collection rate of SIS converted units	70%	70%	70%	70%	70%	70%	70%
<u>SIS collected units</u>							
[I] da Vinci S/Si	1,835	2,589	1,328	621	312	174	6,859
[I] da Vinci X/Xi	10,394	40,030	59,070	68,354	73,732	70,693	322,273
[I] Total	12,229	42,619	60,398	68,975	74,044	70,867	329,132
[J] Repair yield of SIS would-have-been units	72%	72%	72%	72%	72%	72%	72%
<u>Would-have-been Lost EndoWrist repair units</u>							
[K] da Vinci S/Si	1,321	1,864	956	447	225	125	4,938
[K] da Vinci X/Xi	7,484	28,822	42,530	49,215	53,087	50,899	232,037
[K] Total	8,805	30,686	43,486	49,662	53,312	51,024	236,975
[L] Market penetration (% of total units)	2%	8%	12%	12%	12%	12%	10%

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Scenario 1 - Lost EndoWrist Repair Units

Schedule 2.2

	2020	2021	2022	2023	2024	2025	Total
<u>Actual conversion rate</u>							
[M] da Vinci S/Si					15%	50%	
[M] da Vinci X/Xi					15%	50%	
<u>Actual EndoWrist repair units</u>							
[N] da Vinci S/Si					48	89	137
[N] da Vinci X/Xi					11,376	36,357	47,733
[N] Total					11,424	36,446	47,870
<u>Lost EndoWrist repair units</u>							
[O] da Vinci S/Si	1,321	1,864	956	447	177	36	4,801
[O] da Vinci X/Xi	7,484	28,822	42,530	49,215	41,711	14,542	184,304
[O] Total	8,805	30,686	43,486	49,662	41,888	14,578	189,105

NOTES / SOURCES:

Note: Any minor differences are due to rounding.

[A] Per Schedule 6.0.

[B] Per Schedule 7.0.

[C] = [A] * [B]

[D] Per <https://web.archive.org/web/20191108191050/https://www.vizientinc.com/what-we-do> as of November 8, 2019, "50% of the nation's acute care providers are Vizient members."
Per <https://www.vizientinc.com/> as of November 29, 2022, Vizient has ">60% of acute care hospitals in the U.S."
For purposes of my analysis, I use 55%. See discussion in my report.

[E] = [C] * [D]

[F] Per discussion with Keith Johnson and Greg Posdal, SIS anticipated a quick ramp up in 2020, both in sales and in-house repair capabilities. According to Jean Sargent there would have been a transition timeframe conversion for this type of program. In 2020, or Year 1, 30% of Vizient's acute care providers would have reasonably converted. In 2021, or Year 2, and thereafter, 70% would have reasonably converted. I apply a 15% conversion factor in 2020, or Year 1 (i.e. mid-point between 0% January 1 and 30% December 31st). I apply a 50% conversion factor in 2021, or Year 2 (i.e., mid-point between 30% January 1 and 70% December 31st). I apply a 70% conversion factor in 2022, or Year 3, and thereafter.
Per May Dep. 113-114 (November 3, 2022), if the Xi had the same security measures as the Si, Restore would have been able to repair the Xi's as of January 2020.

[G] = [E] * [F]

[H] Per Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 604), where Intuitive targets a collection rate of 70%. See *a/so*, Intuitive-00620200 where Intuitive assumes a collection rate of 70%. See *a/so*, Morales 30(b)(6) Dep. Ex. 141 (at pdf page 1), where Intuitive targets a collection rate of 80%. Per discussion with Jean Sargent, I understand for an expensive instrument such as an EndoWrist, a 75% collection rate would be reasonable.

[I] = [G] * [H]

[J] Deposition of Clifton Parker 43-45, 178-179 (October 25, 2022). Per Restore-00094918-00094956 at 922 (Parker Dep. Ex. 121), 215 out of 310 instruments collected in a 2-week sample that had lives on them passed Restore's inspection (i.e., were repairable). Note: Per Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 609), where Intuitive realizes a yield of 85%. See *a/so*, Morales 30(b)(6) Dep. Ex. 143 (Intuitive-00626597-626616 at 612), where Intuitive targets a yield of 85% to 95%. Schedule 14.0 shows repair yield of SIS collectable units was approximately 88%. For purposes of my analysis, I use 72%.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Scenario 1 - Lost EndoWrist Repair Units

Schedule 2.2

2020	2021	2022	2023	2024	2025	Total
------	------	------	------	------	------	-------

[K] = [I] * [J]

[L] = [K] / [A]

[M] Assuming trial is resolved in or about January 1, 2024, SIS would then begin ramping up. For the Actual EndoWrist repair units, I use the Year 1, Year 2 and Year 3 market conversion rates addressed at [F] above. Currently, I assume Year 1 is 2024 and the first year SIS will begin selling its repair program again. Per May Dep. 60 (November 3, 2022), Restore will have the technical capability to change the usage limitations of the EndoWrist X/Xi's in the third or fourth quarter of 2023. For purposes of this analysis, I assume the conversion rate for the S/Si and X/Xi would be the same starting January 1, 2024.

[N] = [E] * [H] * [J] * [M]

[O] = [K] - [N]

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

SIS's EndoWrist Instrument Repair Summary
Schedule 14.0

[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[1]	[3]	[3]	[3]	[3]	[3]
Order date	Customer	Invoice #	Quantity	Price	Sales	Item (EndoWrist Instrument Number)	Item description	Item comments	Total count	Repaired count	Not repaired count	Expired count	Not supported count
11/14/18	ALEXIAN BROTHERS MEDICAL CTR	60576-1	1	\$0.00	N/A	470001	DaVinci Potts Scissors	Severely damaged. BEYOND REPAIR. Needs replacement	1		1		
06/28/19	LEGACY GOOD SAMARITAN	61059-1	1	\$1,300.00	\$1,300.00	420309	Needle Driver, Mega Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	2	1			
07/18/19	LEGACY GOOD SAMARITAN	61064-1	1	\$1,300.00	\$1,300.00	420309	Needle Driver, Mega Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	3	2			
08/27/19	KAISER FONTANA	95513-1	1	\$1,700.00	\$0.00	420179	Monopolar Curved Scissors	Monopolar Curved Scissors EndoWrist Repair Services	4	3			
08/27/19	KAISER FONTANA	95513-1	1	\$1,600.00	\$0.00	420205	Fenestrated Bipolar Forceps	Fenestrated Bipolar Forceps EndoWrist Repair Services	5	4			
08/27/19	KAISER FONTANA	95513-1	1	\$1,300.00	\$0.00	420093	ProGrasp Forceps	ProGrasp Forceps EndoWrist Repair Services	6	5			
08/27/19	KAISER FONTANA	95513-1	1	\$1,300.00	\$0.00	420194	Mega Needle Driver	Mega Needle Driver EndoWrist Repair Services	7	6			
09/09/19	KAISER FONTANA	60733-1	1	\$1,300.00	\$1,300.00	420318	Small Graptor (Grasping Retractor)	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	8	7			
09/09/19	KAISER FONTANA	60733-1	1	\$1,300.00	\$1,300.00	420006	Needle Driver, Large	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions	9	8			
09/09/19	KAISER FONTANA	60733-1	1	\$1,300.00	\$1,300.00	420093	Forceps, ProGrasp	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	10	9			
09/09/19	KAISER FONTANA	60733-1	1	\$1,300.00	\$1,300.00	420318	Small Graptor (Grasping Retractor)	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	11	10			
09/09/19	KAISER FONTANA	60733-1	1	\$1,100.00	\$1,100.00	420049	Forceps, Cadiere	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	12	11			
09/09/19	KAISER FONTANA	60733-2	1	\$0.00	N/A	420172	Bipolar Forceps, Maryland	BEYOND REPAIR. Needs replacement	13		2		
09/09/19	KAISER FONTANA	60733-2	1	\$0.00	N/A	420172	Bipolar Forceps, Maryland	BEYOND REPAIR. Needs replacement	14		3		
09/09/19	KAISER FONTANA	60733-2	1	\$0.00	N/A	420172	Bipolar Forceps, Maryland	BEYOND REPAIR. Needs replacement	15		4		
	ADVOCATE GOOD SAMARITAN	95713-1	1	\$0.00	N/A	420205	Fenestrated Bipolar Forceps	Expired. BEYOND REPAIR. SIS is unable to provide a replacement	16			1	
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,300.00	\$1,300.00	420296	Needle Driver, Large Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	17	12			
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,300.00	\$1,300.00	420194	Needle Driver, Mega	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	18	13			
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,100.00	\$1,100.00	420036	Forceps, DeBakey	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	19	14			
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,600.00	\$1,600.00	420172	Bipolar Forceps, Maryland	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	20	15			
10/29/19	MARIN HEALTH MEDICAL CENTER	90009-1	1	\$1,300.00	\$1,300.00	420194	Needle Driver, Mega	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	21	16			
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-1	1	\$1,600.00	\$1,600.00	420205	Fenestrated Bipolar Forceps	Repair/Exchange. Received SN: N10190207	22	17			
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-2	1	\$1,600.00	\$1,600.00	420227	PK® Dissecting Forceps	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	23	18			
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-3	1	\$1,300.00	\$1,300.00	420093	Forceps, ProGrasp	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	24	19			
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-4	1	\$1,300.00	\$1,300.00	420093	Forceps, ProGrasp	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	25	20			
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-5	1	\$1,300.00	\$1,300.00	420006	Needle Driver, Large	Refurbish tool end. Clean. Mechanical inspection and testing. Repair/Exchange. Received SN: N10190327	26	21			
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-6	1	\$1,100.00	\$1,100.00	420049	Forceps, Cadiere	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	27	22			
10/30/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-7	1	\$1,300.00	\$1,300.00	420093	Forceps, ProGrasp	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	28	23			
10/29/19	ADVOCATE SOUTH SUBURBAN HOSP	61148-8	1	\$0.00	N/A	420049	Forceps, Cadiere	Expired and disposed of. BEYOND REPAIR. SIS is unable to provide a replacement.	29			2	
11/06/19	ADVOCATE SOUTH SUBURBAN HOSP	61156-1	1	\$1,300.00	\$1,300.00	420006	Needle Driver, Large	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	30	24			
11/06/19	ADVOCATE SOUTH SUBURBAN HOSP	61156-2	1	\$1,300.00	\$1,300.00	420006	Needle Driver, Large	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	31	25			
11/14/19	MARIN HEALTH MEDICAL CENTER	60137-1	1	\$1,300.00	\$1,300.00	420296	Needle Driver, Large Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	32	26			
11/14/19	MARIN HEALTH MEDICAL CENTER	60137-1	1	\$1,100.00	\$1,100.00	420049	Forceps, Cadiere	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	33	27			
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,700.00	N/A	420179	Scissors, Curved Monopolar	Repair/Exchange. Received SN: N12190701	34	28			
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,300.00	N/A	420309	Needle Driver, Mega Suture Cut	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	35	29			
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,700.00	N/A	420179	Scissors, Curved Monopolar	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	36	30			

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

SIS's EndoWrist Instrument Repair Summary
Schedule 14.0

[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[1]	[3]	[3]	[3]	[3]	[3]
Order date	Customer	Invoice #	Quantity	Price	Sales	Item (EndoWrist Instrument Number)	Item description	Item comments	Total count	Repaired count	Not repaired count	Expired count	Not supported count
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,100.00	N/A	420049	Forceps, Cadiere	Repair/Exchange. Received SN: N10180822	37	31			
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,100.00	N/A	420230	Applier, Large Clip	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	38	32			
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,600.00	N/A	420172	Bipolar Forceps, Maryland	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	39	33			
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,100.00	N/A	420230	Applier, Large Clip	Repair/Exchange. Received SN: N10170921	40	34			
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$1,300.00	N/A	420194	Needle Driver, Mega	Repair/Exchange. Received SN: M10140121	41	35			
11/15/19	MARIN HEALTH MEDICAL CENTER	90008-1	1	\$0.00	N/A	420275	Shears, Harmonic Ace Curved	Model number is not supported. NO REPAIR	42				1
	ADVOCATE GOOD SAMARITAN	96156-1	1	\$1,300.00	N/A	420006	Needle Driver, Large	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	43	36			
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,100.00	\$1,100.00	420230	Applier, Large Clip	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	44	37			
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,300.00	\$1,300.00	420207	Forceps, Tenaculum	Repair/Exchange. Received SN: M10100316	45	38			
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,600.00	\$1,600.00	420172	Bipolar Forceps, Maryland	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	46	39			
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,600.00	\$1,600.00	420172	Bipolar Forceps, Maryland	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	47	40			
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,700.00	\$1,700.00	420179	Scissors, Curved Monopolar	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	48	41			
12/10/19	MARIN HEALTH MEDICAL CENTER	90010-1	1	\$1,600.00	\$1,600.00	420205	Fenestrated Bipolar Forceps	Refurbish tool end. Clean. Mechanical inspection and testing. Electrical safety testing. Use count reset and test all functions.	49	42			
					\$38,900.00	Total			49	42	4	2	1
[A] Repair yield of SIS collectable units									88%				

NOTES / SOURCES:

- Note: Any minor differences are due to rounding.
- Note: Column headings are based on a review of invoices, for example, SIS000097-112.
- [1] Summarized per SIS000167.
- [2] Summarized per SIS000097-112. I have indicated "N/A" for records where invoices could not be located.
- [3] Count based on "Item Comments."
- [A] Calculated as Repaired Count / (Repaired Count + Not Repaired Count + Expired Count).